



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Communicated on 3 January 2019

FOURTH SECTION

Application no. 69282/10
KRIS, TOV
against Ukraine
lodged on 15 November 2010

STATEMENT OF FACTS

The applicant company, Kris TOV, is a limited liability company registered in Ukraine in 1995 with its office in Mukachevo.

The circumstances of the case

The facts of the case, as submitted by the applicant company, may be summarised as follows.

The applicant company concluded agreements with the Uzhgorod city municipal authorities for installing billboards in the city. Based on those agreements 38 billboards were installed.

On 26 March 2008 the Executive Committee of the Uzhgorod City Council, considering that the applicant company had no longer any valid agreements with the city authorities for exploiting the billboards sites, decided that the billboards should be removed. The decision was challenged by the applicant company and on 27 March 2008 the Zakarpattya Region Commercial Court issued a preliminary ruling suspending the effect of that decision.

On 5 June 2008 the municipal police informed the applicant company that it had to remove the billboards, failing which the municipal authorities would do that on their own.

Between 11 and 14 June 2008 the billboards were removed without the applicant company's consent.

The applicant company instituted proceedings in commercial courts against the Uzhgorod City Council and its Executive Committee, seeking damages for unlawful and arbitrary removal and destruction of their

billboards. On 23 December 2012 the Zakarpattya Region Commercial Court dismissed the claim finding that it had not been proven by sufficient evidence that the respondents to the dispute had acted unlawfully or that they had been responsible for the removal of the billboards. In its appeal the applicant company insisted that the removal of billboards had been arranged by the municipal authorities, that those facts had been confirmed by the law-enforcement authorities, and that such measures had been contrary to the court interim ruling of 27 March 2008. On 23 February 2010 the Lviv Commercial Court of Appeal upheld the judgment of 23 December 2012. On 25 May 2010 the Higher Commercial Court dismissed the applicant company cassation appeal as unfounded.

The applicant company instituted proceedings in administrative courts, arguing that the Uzhgorod City Council and its Executive Committee as well as the Uzhgorod Deputy Mayor and the head of the Uzhgorod city municipal police had taken unlawful measures on removal and destruction of billboards. On 10 June 2010 the Lviv Administrative Court of Appeal found for the applicant company and established that (i) the agreements with the city authorities for exploiting the billboards sites had been valid and binding at the material time, despite the attempts by the municipal authorities to dissolve the agreements in a unilateral way; (ii) the physical removal of the billboards had been conducted under the supervision of the deputy mayor of Uzhgorod and the head of the Uzhgorod city municipal police; and (iii) the decision to remove the billboards as well as its execution had been unlawful, contrary to the interim measure imposed by the court on 27 March 2008 and in breach of the binding contractual obligations.

COMPLAINTS

The applicant company complains under Article 1 of Protocol No. 1 that its billboards were groundlessly removed and destroyed by local authorities.

The applicant company complains under Article 6 § 1 of the Convention that in refusing its claim for damages, the commercial courts failed to give reasons to their decisions and did not deal with the applicant company's pertinent and important arguments.

QUESTIONS TO THE PARTIES

1. Has the applicant company exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention?

2. Has there been an interference with the applicant company's peaceful enjoyment of possessions, within the meaning of Article 1 of Protocol No. 1? If so, was that interference lawful and proportionate?

3. Were the commercial proceedings, in which the applicant company sought damages, fair for the purposes of Article 6 § 1 of the Convention? Did the domestic courts comply with their obligation under that provision of the Convention to give reasons for their decisions and to reply to specific, pertinent and important arguments by the parties?